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OFFICE OF PETITIONS

In re Application of :
Timothy Robinson :
Application No. 09/765,789 :
Filed: January 19, 2001 : ON PETITION
Attorney Docket Number: :
129510.00001 :

This is a decision on the Petition, filed May 14, 2001; re-filed and supplemented on April 14, 2006, and again re-filed and supplemented with drawing Figure 4 on April 28, 2006, requesting the application be accorded a filing date of January 19, 2001, including 4 sheets of drawing Figures described in the specification. The petition is properly treated under 37 CFR 1.182. Applicant also requests re-publication of the application to include Figure 4. The request is properly treated under 37 CFR 1.221.

The petition is **granted-in-part**.

The application was filed on January 19, 2001. However, on March 14, 2001, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application (hereinafter "Notice") stating that the application had been accorded a filing date; however, Figure 4 described in the specification appeared to have been omitted from the application.

Applicant responds with the instant petitions wherein Applicant avers that 4 sheets of drawings, Figures 1-4, were originally filed with the application on January 19, 2001, and were received by this Office as evidenced by the return-receipt postcard. In support of this assertion, Applicant provides a copy of his return-receipt postcard, acknowledging receipt of, *inter alia*, 4 Figures,

4 sheets of informal drawings in the above-identified application by this Office on January 19, 2001¹.

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

The petition is granted to the extent that the copy of Figures 4 supplied with the instant petition will be made part of the application file.

The Request to Re-publish the Application

The instant request is that the application be republished because the patent application publication fails to contains a copy of Figure 4 (which Applicant has demonstrated receipt of by this Office on filing of the application.

Applicant is advised that 37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. ²

¹ A review of the original petition papers filed on May 14, 2001 reveal that neither a copy of the return-receipt postcard, nor a copy of the missing drawing sheet/Figure, were filed at that time. In the first-filed April 28, 2006 petition, Applicant included the copy of the postcard (but not the drawing) with the re-filed petition. The petition was dismissed in a Decision mailed May 31, 2006. With the second-filed April 28, 2006 petition, Applicant has included a copy of the missing drawing Figure.

² Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The request for corrected publication received on filing the instant petition, was not timely filed under 37 CFR 1.221(b)³.

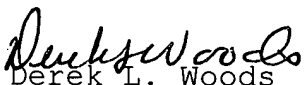
Moreover, the error in failing to print Figure 4 is an Office mistake, but it is not a material mistake under 37 CFR 1.221(b). The error does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

Accordingly, the request to re-publish the application is dismissed.

The fee for the petition requesting republication of the application under 37 CFR 1.221 is \$130.00. Applicant has submitted \$130.00 for the petition under 37 CFR 1.182, which is unnecessary in view of the Office mistake. The fee has been applied to the fee for requesting republication of the application under 37 CFR 1.221. Applicant is also advised that the fee for a petition under 37 CFR 1.182 is \$400.00.

The application will be referred to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of January 19, 2001, and an indication that 4 sheets of Drawings (Figures 1 through 4) were present on filing, using Figures 4 supplied with the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
Attorney
Office of Petitions

³ The May 14, 2001 petition was not grantable as-filed, nor did it include a request to re-publish the application.